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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE BRANCH

TAMARA BARNES

Plaintiff.

vs.

ALLIED INTERSTATE, INC.

Defendant.

C09 03446

PVT

) Case No.
)
) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) AND INVASION OF PRIVACY
)
)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of

1 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
2 practices. Ancillary to the claims above, Plaintiff further alleges claims for
3 invasion of privacy arising from intrusion upon seclusion and public disclosure of
4 private facts.
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6 7 **II. JURISDICTION**

8 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
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10 **III. PARTIES**

11 3. Plaintiff, Tamara Barnes ("Plaintiff"), is a natural person residing in
12 Monterey County in the state of California, and is a "consumer" as defined by the
13 FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal Civ Code
14 1788.2(h).
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16 4. At all relevant times herein, Defendant, Allied Interstate, Inc.
17 ("Defendant") was a company engaged, by use of the mails and telephone, in the
18 business of collecting a debt from Plaintiff which qualifies as a "debt," as defined
19 by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code §
20 1788.2(f). Defendant regularly attempts to collect debts alleged to be due
21 another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §
22 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
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IV. FACTUAL ALLEGATIONS

5. At various and multiple times prior to the filing of the instant complaint, including within the one year preceding the filing of this complaint, Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt. Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways, including but not limited to:

- a. Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff; (§ 1692c(a)(1));
- b. Causing Plaintiff's telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (§ 1692d(5)), specifically, Defendant called Plaintiff more than five times in a single day.
- c. Causing a telephone to ring repeatedly or continuously to annoy Plaintiff (Cal Civ Code § 1788.11(d));
- d. Communicating, by telephone or in person, with Plaintiff with such frequency as to be unreasonable and to constitute an harassment to Plaintiff under the circumstances (Cal Civ Code § 1788.11(e));

- e. Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff, including telling Plaintiff that Defendant was calling for a family member (§ 1692e(10));
- f. Using unfair or unconscionable means against Plaintiff in connection with an attempt to collect a debt (§ 1692f);
- g. Collecting an amount from Plaintiff that is not expressly authorized by the agreement creating the debt (§ 1692f(1));
- h. Collecting an amount from Plaintiff that is not permitted by law (§ 1692f(1));
- i. Failing to disclose Defendant's true corporate or business name in a telephone call to Plaintiff, including refusing to do the same when asked by Plaintiff (§ 1692d(6));
- j. Failing to disclose the caller's individual identity in a telephone call to Plaintiff (§ 1692d(6));
- k. Failing to notify Plaintiff during the initial communication with Plaintiff that the communication was an attempt to collect a debt and any information obtained would be used for that purpose (§ 1692e(11));
- l. Failing to notify Plaintiff during each collection contact that the communication was from a debt collector (§ 1692e(11));

1 m. Failing to provide Plaintiff with the notices required by 15 USC §
2 1692g, either in the initial communication with Plaintiff, or in writing
3 within 5 days thereof, (§ 1692g(a)).
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7 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
8 also constitute an intentional intrusion into Plaintiff's private places and into
9 private matters of Plaintiff's life, conducted in a manner highly offensive to a
10 reasonable person. Plaintiff had a subjective expectation of privacy that was
11 objectively reasonable under the circumstances.
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14 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
15 debt to third parties constitutes a public disclosure of a private fact not of
16 legitimate public concern. Defendant's disclosures were highly offensive to a
17 reasonable person.
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20 8. As a result of the above violations of the FDCPA, RFDCPA and
21 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
22 feelings, personal humiliation, embarrassment, mental anguish and emotional
23 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
24 statutory damages, and costs and attorney's fees.
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**COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT**

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

**COUNT II: VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION PRACTICES ACT**

10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;

- C. Statutory damages for willful and negligent violations;
- D. Costs and reasonable attorney's fees,
- E. For such other and further relief as may be just and proper.

COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION
AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

Respectfully submitted this 22rd day of July, 2009.

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